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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1057

EL MUNDO, INC.,
PETITIONER,

v.

PUERTO RICO LABOR RELATIONS BOARD,
RESPONDENT.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

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TO THE HONORABLE COURT:

Petitioner has prayed that a Writ of Certiorari be issued to review the judgment of the Supreme Court of the Commonwealth of Puerto Rico. This judgment ordered Petitioner:

1. To cease and desist from:

(a) In any manner whatsoever violating the provisions of the collective agreement it entered into, or

which it shall hereinafter enter into, with the Puerto Rico Newspaper Guild, Local 225, Affiliated to the American Newspaper Guild, AFL-CIO.

2. To take the following affirmative action:

(a) To agree to arbitrate the issue that arose on account of the dismissal of employee Julio Cesar Lopez in the light of the collective agreement in force between the parties, specifically Article VII; and should the arbitrator conclude that when the aforesaid employee was dismissed the respondent did not comply with the contractual provisions, he may order the appropriate remedy.

(b) To fix in prominent places in his business the Notice to all Our Employees that is made a part hereof.

(c) To inform the Chairman of the Board within ten (10) days after receiving this Decision and Order, the steps it has taken to comply herewith.

Statement of the Case

The aforesaid judgment was entered by the Supreme Court of the Commonwealth of Puerto Rico on November 26, 1965. It affirmed a decision of the Puerto Rico Labor Relations Board holding that Petitioner committed an unfair labor practice under the Puerto Rico Labor Relations Act, 29 LPRA 61 et seq. (Petitioner's Brief, Appendix C, p. 18a) This Act makes the breach of a labor contract an unfair labor practice.

El Mundo, Inc. seeks review of said judgment claiming that to permit the Puerto Rico statute to be applied to an employer whose operations affect interstate commerce, would be a retrogression to "checkerboard jurisdiction",

multiplicity of tribunals; and diversity of procedures and remedies.[1] Such action, it claims, would operate to frustrate the purpose of the federal legislation and would place an undue burden on interstate commerce. Petitioner also contends that the present matter raises fundamental questions in the administration of federal labor law and policy and that the Supreme Court of the Commonwealth of Puerto Rico has decided important federal questions in a manner which is contrary to the decisions of this Court, and in disregard of clear Congressional intent.

Reasons for Denying the Writ

Petitioner frames the answer to the questions posed, stating that it depends ultimately on whether application of the challenged state law operates to frustrate the purposes of the federal legislation. The crux of his contention lies on the statement that the remedial powers given to Puerto Rico Labor Relations Board by the statute (Puerto Rico Labor Relations Act, 29 LPRA 61 et seq. Petitioner's Brief, Appendix C, p. 18a) may interfere with the federal labor policy. This potential conflict, according to the Petitioner, lies in three grounds:

> (a) Doctrine of "clean hands" embodied in the Act:[2] the provisions in the Puerto Rico Labor Relations Act that permit the Board to dismiss any charge for breach of contract if the charging party is currently in breach of the contract or has not complied with an order of the Board. 29 LPRA 69 (2) (a). (Petitioner's Brief, Appendix C, p. 30a)
>
> (b) Additional sanctions: Any employer who does not comply with a Board's order relating to an unfair

[1] Pages 16 and 17, Petitioner's brief.
[2] Page 15, Petitioner's brief.

labor practice, is prohibited from bidding on any public contract, or from receiving any franchise, permit or license, or any grant or loan of public funds, for a period of one year after the service of the Board's order. 29 LPRA 72 (a), (b). (Petitioner's Brief, Appendix C,[3] pages 35a, 36a)

(c) Any person who willfully disobeys the Board is subject to a fine of up to $5,000 and/or imprisonment of up to one year. 29 LPRA 76. (Petitioner's Brief, Appendix C, p. 37a)

As expressed in the Statement of the Case, Petitioner was ordered to cease and desist from violating the contract and to take the affirmative action there stated. This affirmative action consisted in the specific performance of the contract signed with the union. Specific performance is one of the remedies in actions under section 301. Labor Management Relations Act, 61 Stat. 156, 69 USC, Section 185a (Petitioner's Brief Appendix C, p. 18a). *Steelworkers* v. *American Mfg. Co.*, 363 US 564, 1960; *Steelworkers* v. *Enterprise Wheel and Car Corp.*, 363 US 593, 1960; *Steelworkers* v. *Warrior and Gulf Navigation Co.*, 363 US 574, 1960.

The provisions in the Puerto Rico Labor Relations Act that permit the Board to dismiss a charge for breach of contract when the charging party does not have "clean hands" are designed for application to charging parties. El Mundo, Inc. was not the charging party in the proceedings before the Board. Petitioner was the defendant. There-

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[3] This section of the law seeks compliance, not only of the Puerto Rico Labor Relations Board's orders but also of orders of the National Labor Relations Board. Puerto Rico Labor Relations Act, 29 LPRA sec. 72. The Commonwealth of Puerto Rico has attributed so great importance to collective bargaining that it has forbidden its agencies to deal with employers who violate not only the local law but the federal law.

fore, he could not be aggrieved by a disposition in the law designed for application to charging parties.

Petitioner has neither been forbidden from bidding on any public contract, nor has he been refused any franchise, permit or license or grant or loan of public funds. It has neither been subjected to fines nor any other punishment. It claims no injury because of the application of the Act to his case. In consequence, Petitioner pretends to bring a premature case to the attention of the Court. While the power to issue the writ of certiorari is a comprehensive and unlimited one, it is to be exercised sparingly and only in cases of gravity and importance. *J. I. Case Co.* v. *NLRB*, 321 US 332; *Puerto Rico* v. *Rubert Hermanos, Inc.*, 301 US 543; Rule 38 (5) (a), T 28, Rules, Supreme Court. This petition invokes the power of the Court in a case of limited local interest and claims, as grounds for the issuance of the writ, dispositions of a local law that are inapplicable and have not been applied to his case. *Hendrick* v. *Maryland*, 235 US 610 (1915).

This case poses the problem of the validity of a judgment of the Supreme Court of Puerto Rico enforcing an order of the Puerto Rico Labor Relations Board. The order —a cease and desist order and an order for specific performance of the contract—is of exclusive local interest. The Puerto Rico Labor Relations Act declares all existing collective contracts, as well as those thereafter executed, to be instruments for the promotion of the public policy of the government of the Commonwealth of Puerto Rico, and as such, they were vested with a public interest. The exercise of the rights and the performance of the obligations by the parties to such collective bargaining contracts were therefore made subject to such reasonable regulations as were necessary to effectuate such public policy. The Legislature of the Commonwealth of Puerto

Rico designated only one of its tribunals,[4] the Puerto Rico Labor Relations Board, to regulate the exercise of the rights and duties of the parties to a collective bargaining contract. This declared public policy creates no conflict with the Labor Management Relations Act. There is no expression—from Congress or the courts—that prevents states from adopting reasonable reglementation of collective bargaining contracts. Whether the regulations adopted could conflict with federal labor policy is not before the court in this case because Petitioner has not claimed that, as applied to him, there is such a conflict. Therefore, the problem before the Court is not one of national concern. Section 69 (1) (f) of the Puerto Rico Labor Relations Act, 29 LPRA 69 (1) (f), (Petitioner's Brief, Appendix C, p. 29a) as applied to Petitioner in the aforementioned judgment, is clearly consistent with federal labor policy and as such, creates no issue of national interest.

The Court has enunciated the principles surrounding the doctrine of "preemption" in labor law. The concurrent jurisdiction of state courts over suits for violation of collective contracts was recognized in *Dowd Box Co.* v. *Courtney,* 368 US 502 (1962), and *Local 174, Teamsters Union* v. *Lucas Flour Co.,* 369 US 95 (1962). This Court has recognized the authority of an "appropriate state tribunal" to deal with a breach of contract under Section 301 (a). Therefore, the states are free to allocate the power to adjudicate controversies involving breaches of collective contracts as they deem convenient. *Dreyer* v. *Illinois,* 187 US 71; *Tool & Die Makers* v. *General Electric*

[4] The Legislature of Puerto Rico referred to the Puerto Rico Labor Relations Board as an "adequate tribunal" capable of enforcing the public policy embodied in the act. Puerto Rico Labor Relations Act, Article 1 (4), 29 LPRA 62(4) (Petitioner's Brief, Appendix C, p. 19a). See also *Tool and Die Makers* v. *General Electric Co., infra,* and *Tecumseh Products Co.* v. *Wisconsin Board, infra,* in relation to the similar treatment given to the Wisconsin Board.

Co., 170 F Supp. 945; *Tecumseh Products Co.* v. *Wisconsin Board*, 126 NW 2d. 520. This is precisely what the Commonwealth of Puerto Rico has done in granting exclusive primary jurisdiction to a specialized administrative tribunal, the Puerto Rico Labor Relations Board, over breaches of contract, subject to judicial review by the Supreme Court of the Commonwealth of Puerto Rico. (29 LPRA 70 (2) (a), (b). (Petitioner's Brief, Appendix C, p. 32a)

The "potential conflict" to which this Court referred in the second *Garmon* decision (*San Diego Building Trades Council* v. *Garmon*, 359 US 236, 1959) is not so broad as Petitioner pretends. In *Garmon* the Court was worried about "peaceful conduct . . . arguably protected or prohibited" by the unfair labor provisions of the Labor Management Relations Act. The breach of a collective contract is neither protected nor prohibited by the unfair labor provisions of the federal law. Only conduct that is potentially subject to exclusive federal regulation under Labor Management Relations Act, conduct that can be an unfair labor practice, can create the kind of conflict the Petitioner invokes. For these reasons the *Garmon* decision has not been considered applicable to actions involving breaches of contract. (*Smith* v. *Evening News Association*, 371 US 195, (1962).

Petitioner contends that the rationale of *Garmon*, which excludes state court jurisdiction over unfair labor practices in order that the National Labor Relations Board may be free to develop a consistent federal policy, applies equally to exclude state administrative agency jurisdiction over actions that could be brought under section 301. This section, however, does not confer exclusive jurisdiction to one expert tribunal for the development of federal policy. On the contrary, Section 301 contemplates the exercise of

concurrent jurisdiction by federal and state courts and tribunals. The possibility of conflict between administrative agencies and courts is no greater than the possibility of conflict among the courts themselves, with uniformity ultimately dependent in either case on review by the United States Supreme Court.

The problem posed before the Court is not whether the Puerto Rico Labor Relations Board is or is not bound to apply federal substantive law. There can be no such problem. The law applied by the Puerto Rico Labor Relations Board and the Supreme Court of the Commonwealth of Puerto Rico is consistent with federal labor policy. There is no conflict—potential or otherwise—between the Commonwealth's Supreme Court decision in this case and the doctrines established by this court. *Steelworkers* v. *American Mfg. Co., supra; Steelworkers* v. *Enterprise Wheel and Car Corp., supra; Steelworkers* v. *Warrior and Gulf Navigation Co., supra.* The highly speculative character of the "potential" conflicts adduced by Petitioner are not enough to justify this Court's involvement in the instant case. In consequence, this is not the proper case for the Court's consideration of the question whether a state's Act which defines as an unfair labor practice a breach of a collective contract, contravenes Section 301 (a) of the Labor Management Relations Act.

Petitioner also contends that the creation by Congress of a federal forum for the private litigation of breaches of contracts excludes all other state forums to deal with such violations. As was pointed out by this Court in *Textile Workers* v. *Lincoln Mills,* 353 US 448: "The legislative history makes clear that the basic purpose of section 301 (a) *was not to limit but to expand, the availability of forums for the enforcements of contracts* made by labor organizations . . ."

Besides, when Congress rejected the creation of a federal unfair labor practice for breach of contract and left this field to the "usual processes of the law", in Colorado,[5] Hawaii,[6] Minnesota,[7] Wisconsin,[8] and in the Commonwealth of Puerto Rico,[9] as part of the "usual processes of the law", breaches of contracts were dealt with as local unfair labor practices.

Commenting on this decision by Congress, this Court said in *Dowd Box* v. *Courtney*, 368 US 502 (1962):

> "It is implicit in the choice Congress made that 'diversities and conflicts' may occur, no less among the courts of the eleven federal circuits, than among the courts of the several States, as there evolves in this field of labor management relations that body of federal common law of which *Lincoln Mills* spoke. But this not necessarily unhealthy prospect is no more than the usual consequences of the historic acceptance of concurrent state and federal jurisdiction over cases arising under federal law. To resolve and accommodate such diversities and conflicts is one of the traditional functions of this Courts."

A writ of certiorari should not be issued in this case. Petitioner has not shown that the decision of the Supreme Court of Puerto Rico has deviated, in a detrimental way, from established federal labor policy. On the contrary, the Commonwealth's decision is fully consistent with estab-

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[5] Colorado Labor Peace Act, approved April 1, 1943.

[6] Revised Laws of Hawaii, Title 11, Labor, Secs. 90-1 to 90-19, approved May 21, 1945.

[7] Minnesota Statutes, 1941, Chapter 179, as amended by laws 1943.

[8] Wisconsin Employment Peace Act, 1939.

[9] Act 130, approved May 8, 1945, amended by Act No. 6, March 7, 1946, 29 LPRA Sec. 61, et seq.

lished federal labor policy. It is obvious that Petitioner is seeking an advisory opinion on issues which are not present in this case.

Conclusion

For the above-mentioned reasons, this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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